

VZCZCXRO9932
PP RUEHPD
DE RUEHC #1745/01 2942141
ZNR UUUUU ZZH
P R 202134Z OCT 08
FM SECSTATE WASHDC
TO RUEHLI/AMEMBASSY LISBON PRIORITY 6481
INFO RUEHPD/AMCONSUL PONTA DELGADA 0298

UNCLAS SECTION 01 OF 05 STATE 111745

SIPDIS

E.O. 12958: N/A
TAGS: [KCRM](#) [KWMN](#) [PHUM](#) [PO](#) [PREL](#) [SMIG](#) [KTIP](#)
SUBJECT: PORTUGAL: TIP ACTION GUIDE TO COMBAT TIP
(2008-2009)

REF: EMAIL FROM DESK WITH FINAL ELECTRONIC ACTION PLAN

- ¶1. This is an action request (see para 5).
- ¶2. The 2008 Trafficking in Persons Report rates countries as Tier 2 when host governments are not meeting the minimum standards to combat trafficking in persons (TIP) as defined by the Trafficking Victims Protection Act (TVPA), but are making significant efforts to do so. Remaining on Tier 2, however, is not guaranteed; governments must continue to combat TIP and especially address areas that need further work. All Tier 2 countries will move to Tier 1 if and when they evidence satisfaction of all of the minimum standards. Tier 2 countries are also subject to slipping to Tier 2 Watch List or Tier 3 if they do not continue to make significant efforts to meet the minimum standards from one year to the next.
- ¶3. Please keep in mind the TIP Report measures host government efforts. To be useful for tier placement purposes, there should be a concrete role or tangible value-added by a host government in activities by NGOs, international organizations, or posts.
- ¶4. The following explains steps the government needs to take in order to fully comply with the Minimum Standards for the elimination of trafficking, and therefore qualify for a Tier 1 ranking, and offers suggestions to address specific areas of concern highlighted in the 2008 TIP Report. Legal standards are excerpted from the Trafficking Victims Protection Act, as amended. Implementation Principles are excerpted from guidance issued in 07 State 150188 (October 29, 2007) and are not specific to any country or region. Country specific points are not exhaustive, but offer steps and possible ways to address specific areas of concern. The Department assesses government efforts each year. All governments must show concrete evidence of serious and sustained efforts in eliminating severe forms of trafficking from the previous year. Tier ranking determinations will be based on the government's efforts to comply with the Minimum Standards to Combat TIP during the April 2008 - March 2009 reporting period.
- ¶5. Begin action request: Post is requested to explain to the host government the areas of specific concern noted in the TIP Report and why the government failed to meet the minimum standards (and thus did not meet the requirements for Tier 1 placement). Post may offer steps in para 6 to the host government as possible ways to address specific areas of concern. While the list is not exhaustive, it should focus the host government on deficiencies in meeting the minimum standards and examples of ways to overcome them. As every year, the Department will weigh the government's level of support and participation in reported activities, as well as the efficacy and sustainability of government actions, in light of its resources and capabilities.

Begin Action Guide and internal numbering.

- ¶1. Legal Framework: The government should criminally prohibit

TIP and punish such acts.

(A) For TIP crimes, punishment should be prescribed that is commensurate with that for grave crimes, such as forcible sexual assault.

(B) For TIP crimes, punishment should be prescribed that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

Implementation Guideline: At minimum, governments must criminalize and prescribe penalties for all forms of trafficking relevant in the country, including forced labor. This must include the elements of "severe forms of trafficking in persons" -- force, fraud, and coercion. Although desirable, this need not be accomplished through a comprehensive law, so long as relevant elements of trafficking, specifically including fraud/deception and coercion along with force, are covered by the country's laws.

Sanctions for sex trafficking should be on par with rape. The prescribed penalties for sex trafficking crimes or trafficking involving rape, kidnapping or death should be substantially similar to those for rape, taking into account the full range of sentences available. Consistent with the UN Convention Against Transnational Organized Crime, criminal penalties to meet this standard should include a maximum of at least four years deprivation of liberty, or a more severe

STATE 00111745 002 OF 005

penalty.

COMPLIANCE: The government was fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained:

-- The Government of Portugal strengthened its penal code in 2007 to broaden the definition of trafficking in Portugal and increased prescribed penalties for traffickers. Portugal prohibits transnational and internal trafficking in persons for both labor and sexual exploitation through Article 160, which prescribes penalties that are sufficiently stringent and commensurate with those for other serious crimes. Notably, the penal code revisions provide for criminal punishment for labor recruiters in source countries whose knowing use of fraudulent or deceptive offers result in workers being trafficked in the destination country.

12. Prosecution and other Law Enforcement Efforts: The government should show serious and sustained efforts to combat TIP by vigorously investigating and prosecuting TIP acts, and convicting and sentencing persons responsible for such acts.

(A) The government must provide data regarding investigations, prosecutions, convictions, and sentences, consistent with its capacity to do so, or it shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

Implementation Guideline: All governments, consistent with their capacity to do so, are required to submit full comprehensive data on trafficking enforcement actions, including length of sentences actually imposed on convicted traffickers, as evidence of their vigorous law enforcement efforts. Imposed sentences should involve significant jail time, with a majority of cases resulting in sentences on the order of one year imprisonment or more, but taking into account the severity of an individual's involvement in trafficking, imposed sentences for other grave crimes, and the judiciary's right to hand down punishments consistent with that country's laws. Convictions obtained under other criminal laws and statutes can be counted as trafficking if the government verifies that they involve trafficking offenses.

COMPLIANCE: The government was partially compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- The government prosecuted 65 traffickers in 2006, and convicted 49 trafficking offenders. Eight convicted traffickers served jail time.

Recommended measures to bring the country into full compliance with Minimum Standards:

-- Punishments imposed by Portuguese courts continue to be inadequate; the majority of traffickers, sentences are suspended. Ensure convicted trafficking offenders receive prison sentences commensurate with the heinous nature of the offense committed.

13. Victim Protection and Assistance: The government should demonstrate serious and sustained efforts to combat TIP by protecting TIP victims and encouraging their assistance in the investigation and prosecution of their traffickers. Protection should include:

(A) provisions for legal alternatives to victims, removal to countries in which they would face retribution or hardship.

(B) ensuring that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts that were committed as a direct result of being trafficked.

Implementation Guideline: Critical factors considered in whether a country fully satisfies this part of the minimum standards are: (1) Formal, systematic screening procedures that proactively identify victims and guide law enforcement and other front line responders in the process of victim identification. (2) Shelter, health care, and counseling should be available to victims, allowing them to recount their trafficking experience to trained social counselors and law enforcement at a pace with minimal pressure. Shelter and care may be provided in cooperation with NGOs, but part of the government's responsibility includes funding and referral to NGOs providing services; to the best extent possible, trafficking victims should not be held in immigration

STATE 00111745 003 OF 005

detention centers, or other detention facilities. Factors also considered and strongly recommended for favorable placement are: (1) Victim/witness protection, rights and confidentiality; i.e., governments should ensure that victims are provided with legal and other assistance and that, consistent with its domestic law, proceedings are not prejudicial to victims' rights, dignity or psychological well-being; and that victims are provided information in a language they understand. (2) Source and destination countries share responsibility in ensuring the safe, humane and, to the extent possible, voluntary repatriation/reintegration for victims. At a minimum, destination countries should contact a competent governmental body, NGO or IO in relevant source country to ensure that trafficked persons who return to their country of origin are provided with assistance and support necessary to their well-being. Trafficking victims should not be subjected to deportations or forced returns without safeguards or other measures to reduce the risk of hardship, retribution, or re-trafficking.

COMPLIANCE: The government was fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- The Government of Portugal sustained its efforts to protect trafficking victims throughout the reporting period. Victims are allowed a 30-60-day reflection period to decide

whether or not they wish to press charges against traffickers and, regardless of their decision, they have the right to a one-year residency permit. Once detained and identified by authorities, victims reportedly are transferred to shelter facilities and do not face penalties for unlawful acts committed as a direct part of their being trafficked. Police continued to receive training on how to recognize trafficking victims and are required to fill out a standard detailed form with information when they encounter suspected trafficking cases. The government reported that police counsel all potential victims on the assistance available to them, including legal and medical remedies. The government's 20 immigrant support centers located throughout the country provide ad hoc support services to approximately 1,200 immigrants a day, a figure that reportedly includes trafficking victims. The government reported it distributed anti-trafficking pamphlets at these centers to potential trafficking victims. The government continued to fund the majority of costs for an NGO-run shelter, and provided a fixed subsidy for each victim, including their children, for another.

Recommended measures to ensure the government continues to fully comply with Minimum Standards:

-- Continue to implement procedures to proactively identify trafficking victims among vulnerable groups (such as women in prostitution and immigrants) nationwide and refer potential victims to service providers through a formalized, national referral mechanism.

-- Consider providing data on the number of victims identified and who accept assistance and researching why few trafficking victims opt to receive protection and assistance from NGOs and the government shelter.

14. Prevention: The government should demonstrate serious and sustained efforts to combat TIP by adopting measures to prevent TIP. Measures such as:

(A) steps to inform and educate the public, including potential victims, about the causes and consequences of TIP,

(B) measures to reduce the demand for commercial sex acts and for participation in international sex tourism by nationals of the country,

(C) measures to ensure that its nationals who are deployed abroad as part of a peacekeeping or other similar mission do not engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking,

(D) measures to prevent the use of forced labor or child labor in violation of international standards.

Implementation Guideline: The government should provide/fund a hotline or similar mechanism that offers victims and potential victims assistance/information about TIP. Per the new amendments to the Minimum Standards, starting with the April 2007- March 2008 reporting period to be covered in the 2008 TIP Report, countries should, for example where applicable: (1) Reduce demand for commercial sex acts: Implement or support some form of visible awareness campaign

STATE 00111745 004 OF 005

that educates the clients of the sex trade (and potential sex trafficking victims) if the country has a significant sex trafficking problem, or a campaign that targets those who form the demand for victims of forced labor about the nature of the relevant form of TIP. Nations with legalized prostitution should make additional efforts to proactively identify TIP victims among those in prostitution in the legalized sex trade. This includes the systematic and sensitive screening of persons in the legalized sex trade.

(2) Address child sex tourism: Countries that have a significant number of nationals traveling abroad as child sex

tourists should undertake an awareness campaign that targets tourists traveling to known child sex tourism destinations.

(3) Address trafficking and exploitation committed by multinational peacekeepers: Governments with more than 100 troops on peacekeeping or other similar missions abroad should provide anti-TIP training for these troops (directly or through multilateral efforts), and should investigate and, if appropriate, prosecute any allegations of trafficking crimes or crimes of facilitating trafficking or exploiting trafficking victims committed by these troops abroad and referred to it by the UN or another competent organization.

COMPLIANCE: The government was not fully compliant as reported in the 2008 TIP Report.

Positive results that should be maintained and/or exceeded:

-- The Government of Portugal continued its proactive efforts to prevent trafficking in 2007. For example, in November 2007, the Foreigners and Borders Service (SEF), in cooperation with the Council of Europe, launched the campaign, &You are not for Sale8 and SEF teams traveled throughout the country and to Brazil to disseminate and publicize the campaign. The government took some steps to reduce demand for commercial sex acts by sponsoring awareness campaigns that incorporated anti-demand aspects. In an additional effort to reduce demand, the government amended its criminal code in 2007 to provide specific penalties for clients who knowingly procure the services of a trafficking victim for sexual purposes.

Recommended measures to ensure that the country continues to fully comply with Minimum Standards:

-- Although the Government of Portugal contributes troops to international peacekeeping efforts abroad, it did not conduct specific anti-trafficking prevention training targeted at its military. The government should conduct specific anti-trafficking prevention training for military personnel going abroad.

-- While there is no specific evidence that Portugal is a source or destination for child sex tourism, it is an identified phenomenon in many other Western European countries. The government should consider steps to raise awareness among nationals from engaging in child sex tourism abroad

15. Corruption and Official Complicity: The government should vigorously investigate, prosecute, convict, and sentence public officials who participate in or facilitate TIP, and take all appropriate measures against officials who condone such trafficking.

(A) This should include nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking.

(B) The government must provide data regarding such investigations, prosecutions, convictions, and sentences, or it shall be presumed not to have vigorously investigated, prosecuted, convicted, or sentenced such acts.

Implementation Principle: Governments, consistent with their capacity to do so, must provide full comprehensive data on actions taken against TIP related complicity. Information on general government corruption does not satisfy this minimum standard, except in cases in which specific cases of complicity are not reported by the government or known to the USG, but where there is a reasonable probability of such complicity within the wider context of generalized corruption in that country.

COMPLIANCE: There were no specific cases of complicity reported by the government in the 2008 TIP Report.

Recommendation for measures to ensure that the country fully

complies with Minimum Standards:

-- Continue to vigorously investigate and prosecute

STATE 00111745 005 OF 005

trafficking-related corruption at all levels of law enforcement. Share comprehensive data on investigations, prosecutions, and convictions of complicit officials, and the lengths of sentences imposed on those convicted, if specific cases of complicity have occurred.

End Action Guide and internal numbering.

[16](#). The Department appreciates Post's continued efforts to address trafficking in persons issues.

RICE